

# Exhibit 43

DANIEL NELSON  
Anderson V. TRUSTEES OF DARTMOUTH

January 20, 2010

1

VOLUME: I  
PAGES: 1-65

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

\* \* \* \* \*

MARK ANDERSON

v.

Civil Action No.  
1:19-CV-00109-SM

TRUSTEES OF DARTMOUTH COLLEGE

\* \* \* \* \*

DANIEL M. NELSON

Video Conference Deposition held at the  
offices of Hanover Inn, Two East Wheelock,  
Hanover, New Hampshire, on Monday, January  
20, 2010, commencing at 11:05 a.m.

DANIEL NELSON  
Anderson V. TRUSTEES OF DARTMOUTH

January 20, 2010

2

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DANIEL NELSON  
Anderson V. TRUSTEES OF DARTMOUTH

January 20, 2010

4

## I N D E X

Witness:

Daniel M. Nelson

## EXAMINATION

## PAGE

By Mr. Smith . . . . .5

By Mr. Anderson . . . . .22

## EXHIBITS

## PAGE

23 Case note . . . . .18

Errata sheet: . . . . .65

DANIEL NELSON  
Anderson V. TRUSTEES OF DARTMOUTH

January 20, 2010

8

1 college are discussed, and decisions are made whether or  
2 not to refer cases to the Committee on Standards. And  
3 chairs also review case packets that are prepared, and  
4 before those can go out to committee members and to  
5 charged students.

6 Q. Let's talk about it from a different  
7 perspective.

8 So if you were going to actually tell somebody  
9 about the process of a Committee on Standards hearing  
10 sort of from the beginning to the end, tell me what you  
11 would tell them?

12 A. The hearing itself, scheduled for 2:00 in the  
13 afternoon. Committee members come in fifteen minutes or  
14 thirty minutes before the hearing is scheduled to begin  
15 with the charged student. The chair makes sure that the  
16 committee members all know each other, so introduces  
17 people that haven't previously served together on  
18 committees. Makes sure that committee members  
19 understand the standard of evidence that the college  
20 uses. Makes sure that committee members understand the  
21 charges as they relate to the college's standard of  
22 conduct. Makes sure that nobody has any prior  
23 relationship with the charged student or with witnesses

DANIEL NELSON  
Anderson V. TRUSTEES OF DARTMOUTH

January 20, 2010

9

1 that would either constitute or be perceived to  
2 constitute a conflict of interest. And makes sure that  
3 committee members understand the process of the hearing.

4 That process is we'll be bringing in the  
5 student and any witnesses. We'll discuss whether -- the  
6 order in which witnesses will come in. Talk about how  
7 once that student comes in, committee members can  
8 indicate if they have questions to ask. And also that  
9 the charged student has an opportunity to make an  
10 opening statement, and can propose that committee  
11 members ask questions if the charged student thinks  
12 there are questions that need to be asked that the  
13 committee members haven't asked. It's ultimately the  
14 chair that will decide whether or not those questions  
15 are appropriate and relevant. And kind of preside over  
16 that process for however long the hearing takes.

17 Once there are no more questions, the student  
18 has an opportunity to make a closing statement.  
19 Students aren't obliged to make opening or closing  
20 statements but they do have that opportunity. The  
21 responsibility of the chair is to make sure that when  
22 the hearing is over, the charged student has had an  
23 opportunity to address the charges that are under

DANIEL NELSON  
Anderson V. TRUSTEES OF DARTMOUTH

January 20, 2010

10

1 consideration and to say anything and everything that's  
2 relevant to that.

3 And then the student is excused. The  
4 committee goes into executive session and deliberates.  
5 And there are two phases to the deliberation. Phase  
6 1 is to discuss whether or not there is a preponderance  
7 of evidence that the student has --

8 (Interruption in the proceedings.)

9 MR. SMITH: This is off the record.

10 (Discussion off the record.)

11 (Mr. Anderson is now attending via video  
12 conference.)

13 THE WITNESS: Should I continue where I  
14 was?

15 BY MR. SMITH:

16 Q. Sure.

17 A. So talking about deliberations, there are two  
18 phases to the deliberations. Phase 1 is for the  
19 committee to determine whether or not there's a  
20 preponderance of evidence that the student is  
21 responsible for the violation, the alleged violation in  
22 question. The chair stresses that the committee -- that  
23 the student, charged student is presumed to be not

DANIEL NELSON  
Anderson V. TRUSTEES OF DARTMOUTH

January 20, 2010

11

1 responsible for a violation unless and until the  
2 committee finds that there is a preponderance of  
3 evidence that the violation took place.

4 If the committee decides that the student is  
5 not responsible and that decision is by a majority vote  
6 that does not include the chair -- the chair doesn't  
7 vote in that -- then the hearing is over. If the  
8 committee decides that there is a violation, then the  
9 next phase of deliberations is for the committee to  
10 determine what the sanction would be. And the chair  
11 also does not have a vote in what the sanction is.

12 Q. During a Committee on Standards hearing, is  
13 there typically an employee of the Judicial Affairs  
14 Office present?

15 A. Yes. The director of Judicial Affairs or that  
16 person's deputy is present during the hearing and during  
17 deliberations.

18 Q. And what is the role of the Judicial Affairs  
19 Office employee during the Committee on Standards  
20 hearing?

21 A. Really to provide administrative support: To  
22 operate the tape recorder, any video conferencing  
23 technology, to make sure that the materials are present.



DANIEL NELSON  
Anderson V. TRUSTEES OF DARTMOUTH

January 20, 2010

13

1 of it.

2 Q. Do you have a recollection of when the hearing  
3 involving Mr. Anderson started?

4 A. What time of day or --

5 Q. Yeah, what time of day?

6 A. Not specifically. They typically start in the  
7 afternoon, but...

8 Q. Do you have a specific recollection of when  
9 the hearing happened?

10 A. In the fall of that year.

11 Q. And do you have a recollection of who was on  
12 that panel?

13 A. No, I don't.

14 Q. Tell me, to the extent that you remember,  
15 about the hearing involving Mr. Anderson?

16 A. Hearings are -- all hearings are pretty much  
17 the same. There's the executive session for the  
18 committee before the hearing begins, that I described.  
19 The student is then -- when the hearing begins, the  
20 student is invited in. I typically introduce myself to  
21 the student before the hearing begins, and to the  
22 student's adviser, if the student has elected to have an  
23 adviser. The student is invited to make an opening

DANIEL NELSON  
Anderson V. TRUSTEES OF DARTMOUTH

January 20, 2010

14

1 statement. And the committee asks questions of the  
2 student and of witnesses.

3 The student is given an opportunity to suggest  
4 questions that might be asked. Also the student is  
5 given an opportunity to ask questions him or herself if  
6 the chair thinks the question is relevant. And at the  
7 end of that process, the student is given an opportunity  
8 to make a closing statement. And then the committee  
9 goes into deliberation.

10 Q. Do you have any specific recollection of  
11 Mr. Anderson asking any questions at the Committee on  
12 Standards hearing involving him?

13 A. I don't have a specific recollection of that  
14 but, generally speaking, it's rare that when students  
15 have that opportunity that they don't. So I -- but I  
16 don't have a specific recollection of any specific  
17 questions that he asked.

18 Q. Do you have a specific recollection of who his  
19 adviser was for that particular hearing?

20 A. No, I don't.

21 Q. Do you have any specific recollection about  
22 the hearing at all?

23 A. Very, very little. I've done lots of these

DANIEL NELSON  
Anderson V. TRUSTEES OF DARTMOUTH

January 20, 2010

16

1 don't remember the specifics of the discussion, but as  
2 chair I make sure that ranges of sanctions are  
3 considered. And there's usually a fair amount of  
4 discussion. And then finally a committee member makes a  
5 motion and there's a vote. If a majority doesn't  
6 support the motion, there's more discussion until  
7 there's another motion and a vote.

8 Q. Do you have any specific recollection of how  
9 that process unfolded with regard to Mr. Anderson?

10 A. No, I don't. Not the specifics of it. Just  
11 that the committee determined that he was responsible  
12 and that the appropriate sanction was separation from  
13 the college.

14 Q. After a hearing and a decision by the members  
15 of the Committee on Standards, do you draft a memo about  
16 the hearing?

17 A. Yes, I draft a case note.

18 Q. And did you do so in this situation?

19 A. Yes.

20 MR. SMITH: Mark, are you still on?

21 MR. ANDERSON: Yes, yes.

22 MR. SMITH: I'm going to mark the case  
23 note, which is the case note from September 21, 2017,

DANIEL NELSON  
Anderson V. TRUSTEES OF DARTMOUTH

January 20, 2010

19

1 A. Yes. This is the case note I wrote.

2 Q. And can you tell me what your standard  
3 practice is with regard to drafting a case note?

4 A. So every chair is responsible for drafting a  
5 case note. And my practice is to write a case note  
6 immediately after the hearing.

7 Q. And did you do that in this instance?

8 A. Yes, I did.

9 Q. And does the case note document the hearing  
10 and the reasons for a finding that there was a  
11 violation?

12 A. Yes.

13 Q. Does it also document what the sanction is and  
14 the reasoning behind the sanction?

15 A. Yes.

16 Q. So that accurately reflects your understanding  
17 of the proceeding that took place in September of 2017  
18 with regard to Mr. Anderson?

19 A. Yes. And so it's a summary of the nature of  
20 the case, the committee's decision, and the reasons for  
21 the committee's decision.

22 Q. Is that case note provided to the student  
23 after the hearing?

DANIEL NELSON  
Anderson V. TRUSTEES OF DARTMOUTH

January 20, 2010

52

1 MR. SMITH: Objection.

2 A. I don't have an opinion about that.

3 Q. You don't have an opinion -- sorry.

4 Isn't it the responsibility of the COS chair  
5 at the hearing to ensure that it is performed in  
6 accordance with Dartmouth policies?

7 A. I presided over that hearing to the best of my  
8 ability and believed it was conducted according with the  
9 college's policies.

10 Q. Okay. And you're not aware of any way that  
11 the hearing failed to adhere to the college's policies?

12 MR. SMITH: Objection. You can answer.

13 A. I don't have anything else to say about that.

14 MR. ANDERSON: Shap, could you produce  
15 the student handbook, the one that was in effect at the  
16 time of my hearing?

17 Q. Daniel, are there any texts which dictate the  
18 college's policies and how disciplinary hearings must be  
19 carried out, other than the Dartmouth College Student  
20 Handbook?

21 A. The standards of conduct and the rules for  
22 judicial procedures are described in what used to be  
23 called the "Green Pages" of the student handbook.

DANIEL NELSON  
Anderson V. TRUSTEES OF DARTMOUTH

January 20, 2010

53

1 Q. Okay. And are there any other -- is there  
2 anything else that -- any other publicly available  
3 documents which describe Dartmouth's policies?

4 A. I believe the student handbook constitutes the  
5 relevant policies.

6 Q. All right. So tell me when you have that.

7 MR. SMITH: He has -- the challenge is  
8 these changed. He has both 9 and 10 in front of him.  
9 And depending on when you are talking about, I think  
10 9 is likely relevant for your initial hearing, and I  
11 believe 10 was relevant for your subsequent hearing. So  
12 he has both of those in front of him.

13 MR. ANDERSON: Okay. Sorry. Just to  
14 clarify, you said that there were different handbooks in  
15 effect at my first and second hearing?

16 MR. SMITH: I believe. And my  
17 understanding is that there was a revision of the  
18 student handbook during the course of the time that you  
19 were going through the judicial process. I do not -- I  
20 do not believe that any of the particular provisions  
21 that will be relevant to your process were revised, but  
22 to be completely accurate, we've produced both of those  
23 student handbooks.